

NOTARY NOTES

Newsletter of Licensing Division
North Dakota Secretary of State's Office
Alvin A. Jaeger, Secretary Of State

November 1999

Vol 1 No. 4

Greetings!

This is the fourth edition of Notary Notes. As with the previous editions, the purpose of this newsletter is to inform and educate those individuals who have been commissioned as Notary Publics for the State of North Dakota. It is my most sincere hope that you will find it helpful in the carrying out of your notarial duties.

While some individuals may view the need for a notary as an irritant or an inconvenience, the function of a notary public is rooted back to the days of ancient Rome. Therefore, it is probably no accident that many contracts, deeds, laws, court affidavits, etc. require the services of a notary.

One of the main purposes of a notary is to protect against fraud. Therefore, the Office of Notary Public is not an office or duty that should be taken lightly. It is a position of considerable public trust. Therefore, I encourage you to thoroughly read this newsletter and study the state laws related to notarial duties that are a part of it. While the vast majority of notaries understand his or her duties, his or her responsibilities, and the integrity that is required of them as notaries, a refresher from time to time can be valuable.

For example, listed elsewhere in this newsletter are eighteen incidents of violations that were settled during the 1997/1999 biennium. As you can see, it cost a few notaries some money, suspensions or revocations of some commissions, and probably some embarrassment. This is especially true, when the violation occurred on an application for a notary commission that was submitted to the Secretary of State's office by another applicant.

As a public official, every notary needs to pause and remember the oath they took when he or she applied for their notary commission. It stated, "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God." These are powerful words and they are the reason the public you serve trusts you and expects you to execute your notarial duties with the highest level of integrity.

If you have any questions or concerns about notary related issues, please contact this office. My staff and I are here to help and assist you in anyway possible.

Al Jaeger, Secretary of State

How Many Notaries?

As of June 30, 1999, North Dakota had 11,571 commissioned notaries. This is an increase of 327, or 3%, over the number of notaries at the conclusion of the previous biennium on June 30, 1997.



Need Information? Need Forms?

The Secretary of State's office has two new services to help notaries, applicants, and other citizens easily obtain information and forms related to notary publics. They are Fax-on-Demand and the Secretary of State's web site.

The Fax-on-Demand service allows interested parties to dial (701) 328-0120, to place an order for forms, and have the requested forms sent via facsimile transmission directly to the caller's fax number. When the Fax-on-Demand service is accessed, there is an initial seven to ten second delay before the instructional message begins. The recorded message has step-by-step instructions on how to order an index of all the forms available in the Secretary of State's office. For the notary forms, the code for the notary application package is 2000; a notary change of address form is coded as 2010, and a notary name/seal change form is coded as 2020. When ordering, please remember to always include your area code.

When accessing the Secretary of State's web site at www.state.nd.us/sec, a menu will appear at the left side of the screen. Under the "office divisions" section of the menu, click on the administration/licensing link. Then, you can access the Notary Public section. It has information on what is a notary public, how to become a notary public, term of office, certifications, notary journal, address or name change, notary responsibilities, step-by-step notarization hints, state law pertaining to notary publics, and links to two national notary associations. The forms are also available for downloading through an Adobe Acrobat Reader.

May I Be A North Dakota Notary If I Do Not Live In North Dakota? Yes, But...

The law currently allows a resident of a bordering county in a neighboring state to be appointed as a notary public for the State of North Dakota. That is, as long as that state extends the same type of reciprocity to North Dakota residents who live in a bordering county to that state. For example, a resident of Clay County, Minnesota may apply for a commission as a notary public in the State of North Dakota. The same applies to counties bordering Montana. However, South Dakota currently does not offer reciprocity so residents in those bordering counties are not eligible to become a North Dakota commissioned notary public.

However, please remember. If you are commissioned as a North Dakota notary and you live in a bordering county outside the state's boundaries, you can only perform notarial duties in North Dakota. You cannot perform notarial duties in the county of your residence. If you want to do that, you first need to obtain a commission from the appropriate authority within the state in which you live.



Name Change and How To Sign

When notarizing a signature, the notary public must always sign his or her name exactly as it appears on their commission. For example, if the commission lists the notary's middle initial, the notary must use it when signing his or her name when notarizing. If the commission does not list the middle initial, the notary cannot use his or her middle initial until a name change form has been filed and approved.

Another common reason for a notary wanting to sign his or her name differently is because of a change in marital status.

There are six steps a notary must follow when changing the name on his or her notary commission: (1) the change in name must be reported to the Secretary of State within 30 days; (2) the notary must contact his or her bonding surety company and request a name change rider to their bond (if a personal surety is being used, the surety(ies) must sign the name change form); (3) file the name change form with the Secretary of State along with a payment of \$10; (4) the Secretary of State will then issue a certificate of authorization allowing the notary to purchase a new notary seal from a notary seal/stamp vendor; (5) the certificate of authorization with an impression of the new seal/stamp must be returned to the Secretary of State; and finally (6) the Secretary of State will approve the new notary seal/stamp and send an approval notification to the notary. When the notary receives the notification, he or she can begin to use their new signature.

Thirteen Important Things For A Notary To Know And Remember

Should I Notarize This Document?

A notary public is considered a public officer, an impartial agent of the state, and a witness of notarial writing and signatures. The notary, as an impartial witness and having no conflict of interest, must ask themselves the following questions before notarizing a document:

1. "Am I a party to the transaction?"
2. "Am I named in the document as a party or interested person?"
3. "Do I have any financial or beneficial interest in this transaction?"



If your answer is yes to any of these questions, you are not an impartial witness. Therefore, you should not notarize the document.

Notarizing In A Foreign Language

From *The National Notary*, with permission from The National Notary Association

You can notarize a document written in a language you don't understand, but there are some caveats. If a document is in Spanish or French, for example, and you don't know what it says, you could never be sure that it's not fraudulent.

The problem is all the knottier if the signer wants to sign a name in characters you can't read, such as Arabic or Chinese. It would be advisable to direct the signer to a notary who does understand the language. Many countries have consulates in major American cities with officials capable of notarizing documents from the country they represent.

If you decide to notarize a document in a language you can't read, be sure the notarial wording ("certificate") is in a language you can read. Also, you must be able to talk with the signer in a language you both understand.

"Unlike anywhere else on earth, the notary in America is an ordinary person of integrity and education who serves the public on behalf of the state which has appointed him or her."

1. A notary is prohibited from notarizing his or her spouse's signature.

2. It is impossible and illegal for a notary to notarize his or her own signature.
3. A commissioned North Dakota notary public is authorized to notarize signatures anyplace in the State of North Dakota and not just in their county of residence.
4. It is quite common for an employer to pay a notary's application fee, the premium for the notary's bond, and the cost of the notary's official seal. Nevertheless, it is important to remember that the commission is issued by the state to the notary and not to the notary's employer. Therefore, a notary public must always remember that they personally assume the duties and obligations of the office to which they have been commissioned. As a public official they, and not the employer, are responsible for performing the duties of the notary public in full compliance with the provisions of state law. If disciplinary proceedings are warranted, they will be initiated against the notary and not the employer.
5. The purpose of a notarization is to protect against fraud. A notarized signature proves the person personally appeared before the notary public and willingly and freely affixed or acknowledged his or her signature. If these elements are not present, it is unlawful for the notary to notarize.
6. The notarization of a signature does not prove that a document or statement is true or accurate nor does it validate or legalize a document. All it does is what is stated in # 5.
7. In order to purchase a new or replacement notary seal/stamp from a vendor, a notary must first obtain a Certificate of Authorization from the Secretary of State. State notary law only allows vendors to provide notary seal/stamps to those individuals who have presented them with an official authorization. Until such time an impression of the notary seal/stamp has been filed with and the notary has received confirmation from the Secretary of State, a notary is not authorized to use the new notary seal/stamp or perform notarial duties with it.
8. Since July 1, 1997, state law specifically prohibits the use of the Great Seal of North Dakota on a notary's stamp. If a notary has such a stamp, they must discontinue its use and request a Certificate of Authorization to purchase a new stamp from the Secretary of State's office. The law does not allow a vendor to sell a notary seal/stamp without such an authorization.
9. On occasion, a notary public might be asked to falsify the date of their notarial act. For example, the requester might

have neglected to observe an important filing deadline. However, notaries must remember it's simply not smart, legal, or worth the potential liability. The only date that the notary can use for his or her notarial act is the actual date on which they notarize the document.

10. A notary's signature should not appear on his or her stamp. It is unnecessary and proves nothing. Only the original signature of the notary is valid. A notary must never use a stamped signature in lieu of his or her original signature.
11. A notary public can affix his or her seal/stamp anyplace on the document in proximity to the signature of the notary. What is important is that the impression is clear and legible.
12. If a notary inadvertently fails to affix his or her seal/stamp to a notarization, it can be done after the signer has appeared before the notary. Affixing the notary seal/stamp is not the act of notarizing. Rather, it is a part of the confirmation that the main event has occurred. For example, that the person who signed the document appeared before the notary and willingly signed it. Keep in mind, however, that the notary's seal must be affixed before the notarization can be considered complete or enforceable.
13. When notarizing, a notary public must always sign their name exactly as it appears on his or her commission. For example, if the commission lists the notary's middle initial, that is the way the notary must sign the notarization. If a notary wants to make a change, they should refer to page 2 or check out the procedure on the Internet at www.state.nd.us/sec.

When Are Some Documents Acknowledged And Others Sworn To?

When notarizing a signature, a notary performs one of two main official notarial acts. He or she either: (1) takes an acknowledgment by the signer of a document such as a deed or a will, or (2) administers an oath (or affirmation) to the signer of a document, such as an affidavit or other sworn statement evidenced by the use of a jurat. These two notarial acts have different purposes.

An acknowledgment is the simple authentication of a signature in the presence of a notary. The term acknowledgment means that the signer appeared before the notary and acknowledged that he or she signed the document (N.D.C.C. § 47-19-14.5). The notary first needs to verify the identity of the signer (N.D.C.C. §47-19-20). The use of an acknowledgment acts as a safeguard against forgery and undue influence. The notary should be satisfied that the signer appears to understand the document and has not been coerced into signing. Examples of legally approved acknowledgment forms can be found in N.D.C.C. §47-19-14.6. **(Continued on top of page 4)**

NOTARY NOTES – 4

(Continued from bottom of page 3)

The language of a jurat evidences the authentication of a signature made under oath or affirmation. An oath or affirmation is administered to a document signer when the signer is required to make a sworn statement about certain facts. An example where a jurat is used is in an affidavit. The signer personally appears before the notary, who is an officer of the state to administer oaths, to swear (affirm) that the information contained in the document they are signing is true. A notarization requiring

an oath should begin with the administration of an oath or affirmation by the notary. To administer the oath, the notary can ask, "Do you swear (or affirm) that the information contained in this document is true?" After receiving an affirmative answer, the notary must complete a proper notarial certificate (jurat) indicating that an oath or affirmation was taken. The traditional jurat language is "subscribed and sworn to before me on _____." An affidavit or other sworn statement must be signed in the presence of the notary (N.D.C.C. § 44-06-13.1(1)).

Make Sure The Venue Is Correct

The venue is the clause in an affidavit naming the locality where it was made and sworn to. Therefore, it is important for the notary to remember that the venue must always indicate the correct state and county where the notarization took place. For example, there are situations when a notary is given certificate wording that has the venue pre-printed with a state or county that is different from where the notarization will actually take place.

When presented with an incorrect venue, the notary may either correct it by drawing a line through the inappropriate wording with ink, then writing in the correct venue information, and initial the correction. Here is an example:

State of ~~South Dakota~~ North Dakota
County of ~~South~~ Cass

Or, the notary may attach a loose notarial certificate having the correct venue. Only the notary and not the signer should make any corrections to the notarial certificate wording. Although he or she may correct errors in the main body of a document, a signer must never make corrections to the notarial wording.

Notary Fees

According to North Dakota law, a notary may charge up to a maximum of \$5 for each notarial act they perform.

However, because an employer often pays many of the costs related to the commissioning of a notary, the question is often asked, "Who can keep the fees collected by a notary?"

To answer that question, it must be remembered that a notary commission is issued to the applicant and not to the employer. Therefore, in the eyes of the law, a notary is

essentially an "independent" agent who may negotiate the sharing of his or her fees with someone else. That could be his or her employer because the notary is notarizing on company time and, as a result, they may choose to share a part or their entire fee with the employer.

Regardless of the arrangement, it must be remembered, it is the notary and not the employer who is authorized by law to charge for notarial services. The law (N.D.C.C. § 44-06-14) states, "It is an infraction for any person other than the notary

NOTARY NOTES – 5

1999 Legislative Changes

With the passage of House Bill 1126, the 1999 North Dakota Legislative Assembly made several changes in the law as they relate to Notary Publics in the State of North Dakota. The underlined text represents the changes that became effective August 1, 1999.

"44-06-13.1. Prohibited acts - Penalty. A notary public may not notarize a signature on a document if:

1. The document was not first signed or re-signed in the presence of the notary public, in

public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document." Therefore, a notary's employer may not collect a



commission, assess a surcharge, or a fee of any type over and above the \$5 maximum the law allows a notary to charge for each notarial act.

As commissioned public servants and officers of the state, notaries should be careful to treat all signers equally when providing the same service. Whether or not they are customers of the notary's employer, the notary should charge the same consistent fee for any like notarial services. Otherwise, both the employer and the notary may be open to charges of bias and discrimination.

Do Not Start The Race Before The Gun Sounds

Notaries are encouraged to carefully read the instructions that are provided by Secretary of State's office during the various stages of becoming a commissioned notary. If they are not clear or there is a nagging doubt in your mind, please contact us. We are always willing to answer questions and, if necessary, make changes and improvements to our forms and instructions.

For example, the certificate of authorization that allows a notary to obtain a notary public seal/stamp is not the commission of office. After the vendor has supplied you with a notary seal/stamp, you must affix an impression of it on the certificate of authorization and return it to the Secretary of State's office. After it has been received and filed, the Secretary of State will issue the commission of office to the notary.

Until such time the notary receives the commission of office, the notary may not begin performing notarial functions. The certificate of authorization is only for the purpose of obtaining the notary seal/stamp. Having the notary seal/stamp in hand does not make one a notary. The final step is for the Secretary of State to issue the commission of office. That is the sound of the gun. Therefore, do not start the race (performing notarial duties) until you have the official commission of office in hand. That is the document that gives your commencement and expiration date. Just like a real race, jumping off early could result in a penalty or, worse yet, serious liability issues for the notary.

the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.

2. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. The notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission.

However, such an act by a notary by itself does not affect the validity of the document.

5. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized.

A notary public who violates this section is guilty of an infraction and the notary public's commission must be revoked by the secretary of state using the procedure under chapter 28-32."

Notary Violations

July 1, 1997 to June 30, 1999



(**Note:** The circumstances surrounding each violation are often different and result in differing penalties. Because of space restrictions, only an abbreviated summary of each violation will appear. All violations are a matter of public record.)

September 5, 1997 – Notary violated 44-06-13.1(2) and 44-06-13.1(3) by notarizing her own signature and her spouse's signature. Penalty: Fine of \$150, notary commission suspended for six months, and required to verify by letter that the notary had read and understood the notary law.

March 11, 1998 – Notary violated 44-06-03 by backdating documents. Penalty: Fine of \$150 and letter of reprimand.

March 28, 1998 – Notary violated 44-06-13(1) by notarizing six affidavits signed by different parties while the parties were not in the presence of the notary. Penalty: Notary commission revoked for thirty months. The decision of the Secretary of State was affirmed by the District Court.

NOTARY NOTES – 6

June 17, 1998 – Notary violated 44-06-13.1(2) by notarizing a document in which the notary was a party to the transaction. Penalty: Notary commission revoked for six years (Notice of Entry of Order by Default).

July 27, 1998 – Notary violated 44-06-13.1(1) by executing a notarization for a signature that did not appear on the document. Penalty: Fine of \$150, required to verify by letter that the notary had read and understood the notary law, and a letter of reprimand.

July 27, 1998 – Notary violated 44-06-13.1(1) by executing a notarization for a signature that did not appear on the document. Penalty: Letter of reprimand.

September 24, 1998 – Notary violated 44-06-13.1(3) by notarizing her spouse's signature. Penalty: Fine of \$150 and commission suspended for six months.

November 10, 1998 – Notary violated 44-06-04 for six years as a non-commissioned Notary who notarized documents in the course of her employment. Penalty: Prohibited from applying for notary commission for three years.

December 4, 1998 – Notary violated 44-06-13.1(3) by twice notarizing her own signature. Penalty: Commission revoked for six months and letter of reprimand.

December 12, 1998 – Notary violated 44-06-03(1) by improperly notarizing a misleading notary block. Penalty: Letter of reprimand.

December 15, 1998 – Notary violated 44-06-13.1(1) by twice improperly signing notary blocks with incorrect dates. Penalty: Letter of reprimand.

February 22, 1999 – Notary violated 44-06-13.1(3) by notarizing his own signature. Penalty: Fine of \$150 and a letter of reprimand.

March 1, 1999 – Notary violated 44-06-13.1(3) by notarizing his spouse's signature. Penalty: Fine of \$150 and commission suspended for three months.

April 1, 1999 – Notary violated 44-06-03 by notarizing a document that was predated. Penalty: Letter of reprimand.
(Continued on top of page 6)

(Notary Violations - continued from bottom of page 5)

April 29, 1999 – Notary violated 44-06-13.1(1) by notarizing a signature that did not appear on the document. Penalty: Fine of \$150.00, required to verify by letter that the notary had read and understood the notary law, and a letter of reprimand.

May 18, 1999 – Notary violated 44-06-13.1(3) by notarizing her spouse's signature. Penalty: Fine of \$150.00 and commission suspended for six months.

May 18, 1999 – Notary violated 44-06-03 by notarizing a document that was predated. Penalty: Letter of reprimand.

June 1, 1999 – Notary violated 44-06-13.1(3) by notarizing her own signature. Penalty: Fine of \$150 and commission revoked for six months.



Notary Web Sites



The National Notary Association at:

www.nationalnotary.org.

American Society of Notaries at:

www.notaries.org.

North Dakota Secretary of State at:

www.state.nd.us/sec.

(If you misplace your copy of *Notary Notes* it will be posted on the Secretary of State's Web Site for easy reference.)



Copy of the Law

Attached to this newsletter is a copy of the North Dakota law as it pertains to Notaries Public.



1999-2001 North Dakota Blue Book

The Secretary of State has just published the *1999-2001 North Dakota Blue Book*. The 600 plus page book contains contributions from over 70 individuals throughout the state. It is an excellent resource book about all facts of state government and includes information about counties and cities. A special feature section chronicles the experiences of the Lewis and Clark Corps of Discovery in North Dakota.

If interested, please call the Glass Box Gift Museum Store located at the North Dakota Heritage Center at (701) 328-2666 for credit card orders. The cost of the book is \$15 plus shipping and handling.

Notary Notes is the newsletter of the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue Dept 108 Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: 1-800-352-0867, ext. 82901

Mary Feist..... Licensing Director
Charlotte Zander Licensing Specialist
Al Jaeger Secretary of State
Bob Schaible Deputy
Kim Shaw..... Editor, Administrative Assistant

"Signatures are notarized for one purpose only: to minimize any chance a signature on a document is a forgery. Notaries are in the forgery prevention business."